



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: JBlanco Enterprises, Inc.

File: B-402905

Date: August 5, 2010

William L. Sasz, Esq., Sherman & Howard LLC, for the protester.
Christopher S. Cole, Esq., Amanda M. Willis, Esq., Department of the Air Force, for the agency.
Christina Sklarew, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a negotiated procurement that provided for the evaluation on a pass/fail basis of the offeror's ability to prepare task order proposals, the protester's failure to complete the required demonstration project is not a minor error that can be waived or clarified.

DECISION

JBlanco Enterprises, Inc., of Denver, Colorado, protests the rejection of its proposal under request for proposals (RFP) No. FA7000-10-R-0017, issued by the Department of the Air Force for the repair and replacement of roofs at the United States Air Force Academy.

We deny the protest.

BACKGROUND

The RFP, which was set aside for eligible section 8(a) firms, provided for the award of a fixed-price, indefinite-delivery/indefinite-quantity (ID/IQ) contract for a base and 4 option years. Offerors were informed that award would be made to a technically acceptable offeror on the basis of a past performance-price tradeoff. The past performance factor was stated to be significantly more important than price. RFP at 67. The RFP also stated that the agency did not intend to conduct discussions or provide offerors with an opportunity for proposal revisions. Id. at 71.

Offerors were informed that individual construction projects would be awarded as task orders under the ID/IQ on an as-needed basis. For each task order, the contractor would be requested to provide design drawings in accordance with the solicitation's roofing specifications, and a price proposal. The task order price proposals would be based on, among other things, the most current version of *RS Means*¹ and the "e4Clicks Project Estimator," a construction cost estimating software tool. See RFP amend. 1 at 6; Specifications at 11. The RFP identified multipliers that would be applied to costs to calculate prices for the task orders, such as overhead or profit; task order coefficients; and "the City Cost Index (CCI)" for Colorado Springs, Colorado. See Specifications at 12. Further, as relevant here, the RFP specified a particular method for applying the CCI in the calculations.² Id.

The RFP required that proposals be submitted in three volumes: price, technical, and past and present performance. The technical volume would consist of a demonstration project proposal that would be evaluated on a pass/fail basis to assess an offeror's capability in preparing project documents, including the task order price proposals. RFP amend. 1, at 6. Instructions for preparing the technical volume required, among other things, that the offeror provide a cost estimate for the demonstration project, using the same procedures as those provided for pricing task orders, as described above. See id.; Specifications at 11.

In order for a technical volume to meet the solicitation's standards, it had to meet the requirements in the specifications, demonstration project statement of work, and demonstration project drawings. The RFP identified a number of other requirements that the technical volume was required to satisfy, including that it provide correct calculations or other documents to support the design information required in the proposal. See RFP amend. 1 at 6-7. Offerors were warned that if an offeror's technical volume was found technically unacceptable, the agency would not evaluate the offeror's price and past performance volumes. RFP at 60, 67, 68.

The agency received a number of proposals, including JBlanco's. The Technical Evaluation Team found the protester's proposal technically unacceptable because its technical volume did not demonstrate compliance with the specification's instructions for preparation of the demonstration project (which were the same instructions that were to be followed when preparing task order price proposals).

¹ The *RS Means Facilities Construction Cost Data Book* is a trade publication that provides annually-updated construction cost information to assist professionals in estimating construction-related costs. See www.constructioncostestimating.net/rs-means-estimating.shtml.

² The specifications stated that the "conventional line items will be summated per division and subdivision as shown in the tables," after which the sum would be multiplied by the total division/subdivision CCI. Specifications at 12.

Specifically, although the unit price measurement specifications instructed offerors to apply a CCI multiplier at a later point in the calculations than at the line-item level, see Specifications at 12, JBlanco applied the CCI at the line item level. This difference in approach resulted in a price that was different from what would have been produced under the methodology established by the specifications.

After receiving notice of the rejection of its proposal and a written debriefing, JBlanco filed an agency-level protest. The protester did not challenge the agency's determination that its technical volume was noncompliant with the RFP's requirements, but argued that its noncompliance was only a minor error that the firm should have been permitted to clarify. See JBlanco Protest to the Air Force. The Air Force denied the protest, stating that the determination to exclude JBlanco's proposal was based on the protester's failure to prepare its demonstration project estimate in accordance with the specifications, statement of work, and drawings, as directed in the RFP, and that this determination was both reasonable and consistent with the evaluation criteria. This protest to our Office followed.

DISCUSSION

JBlanco complains that its proposal met most of the solicitation's requirements and that, to the extent it did not, its noncompliance was minor and should have either been waived or corrected through clarifications.

An offeror has the responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. In this regard, an offeror must affirmatively demonstrate the merits of its proposal, and risks the rejection of its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5.

The purpose of the technical proposal's demonstration project was for offerors to demonstrate their task order proposal preparation capability. Offerors were informed that, among other things, the agency would review offerors' calculations for a complete and reasonable task order price proposal complying with the project specifications and drawings. RFP amend. 1 at 6-7. Thus, it was incumbent upon the protester to submit a technical proposal that clearly demonstrated its ability to satisfactorily calculate prices as instructed.³ JBlanco essentially concedes that it did not do so in its technical volume.

³ While JBlanco insists that its error was minor, citing the relatively small dollar amount involved and its belief that it would not likely ever repeat the error in the performance of the contract, see Comments at 3, we find these arguments unpersuasive in light of the RFP's clear statement that the purpose of the

(continued...)

We do not agree with JBlanco that its failure to demonstrate its capability to properly prepare task order proposals could be waived as a minor error or corrected through clarifications. Unlike a clerical or mathematical error in a price proposal, which could be susceptible to correction through clarifications, the error here implicates the protester's ability to properly prepare its task order proposals.⁴ We think the agency could reasonably conclude that allowing the protester to correct the prices or change the pricing method in its technical proposal, after the agency explained what errors the protester had made, would defeat the purpose of the project demonstration. On this record, we find no basis to question the reasonableness of the agency's determination that JBlanco's proposal failed to meet this pass/fail solicitation requirement.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

(...continued)

demonstration project was to "demonstrate the offeror's performance capability in preparing project documents." In this regard, the agency states that it is unable to verify the impact of the pricing error without conducting discussions.

⁴ Although agencies have broad discretion as to whether to seek clarifications from offerors, there is no requirement that offerors be permitted to clarify their proposals. A.G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5-6. In any event, since clarifications-unlike discussions-do not envision material proposal revisions, the revisions JBlanco seeks to make proposal acceptable do not appear to be clarifications. See FAR § 15.306(a)(2); A.G. Cullen, supra, at 5-6.